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Standing Committee on Access to Information, Privacy and Ethics

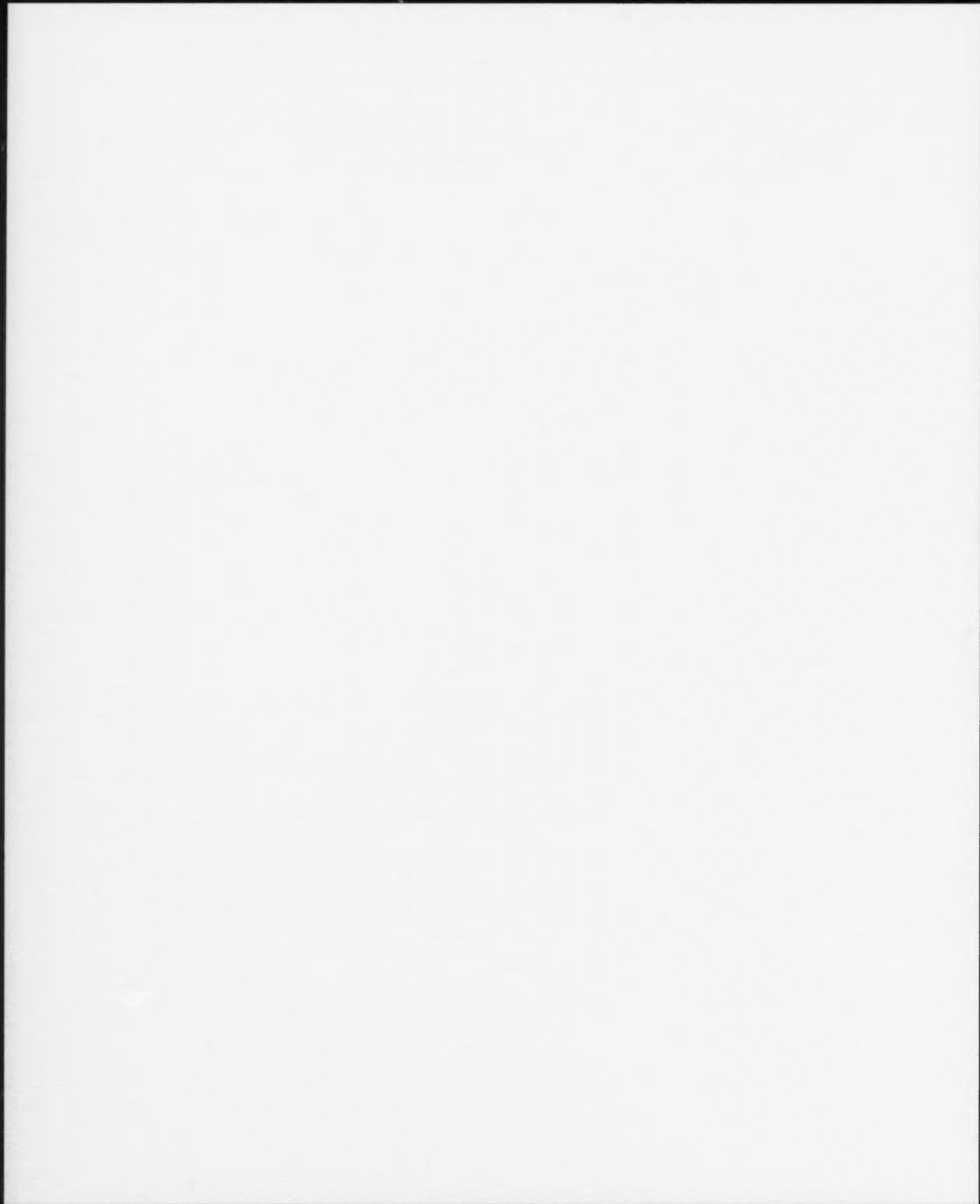
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Tuesday, May 8, 2018

Chair

Mr. Bob Zimmer



Standing Committee on Access to Information, Privacy and Ethics

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● (0845)

[English]

The Vice-Chair (Mr. Charlie Angus (Timmins—James Bay, NDP)): I'm going to take absolutely no side comments today. This is going to be a well-run meeting.

Good morning, everyone. Pursuant to standing order 81(4), the main estimates 2018-19: vote 1 under the Office of the Commissioner of Lobbying, vote 1 under the Office of the Conflict of Interest and Ethics Commissioner, vote 1 under the Office of the Senate ethics officer, and votes 1 and 5 under Offices of the Information and Privacy Commissioners of Canada, referred to the committee on Monday, April 16, 2018.

This morning we're very pleased to have, from the Office of the Commissioner of Lobbying, Madam Bélanger and François Bertrand.

We will begin with your opening remarks.

Ms. Nancy Bélanger (Commissioner of Lobbying, Office of the Commissioner of Lobbying): Thank you very much. Good morning, Mr. Chair, and good morning, members of the committee.

This is my first appearance before you as Commissioner of Lobbying. I want to let you know that I feel quite at home in my new position. The staff has been most welcoming and supportive since my arrival.

The team is comprised of professional and dedicated employees. I am quite fortunate to have them assisting me on the delivery of my mandate aimed at enhancing transparency and accountability of federal lobbying activities. This objective contributes to Canadians' confidence in public office holders' decision-making.

I am pleased to be here today to discuss the main estimates and outline the priorities of our office in the coming year. I am joined by François Bertrand, who is our director of registration and client services. Unfortunately, the CFO could not join us today.

[Translation]

The Lobbying Act mandates three key activities: maintaining the Registry of Lobbyists; developing programs that foster awareness of the act and the Lobbyists' Code of Conduct; and enforcing compliance with the act and the code.

The 2018-19 main estimates for the office come to about \$4.5 million. This is essentially the same amount as last year and, in fact, as the last 10 years.

Our office is currently comprised of 26 full-time employees, and salaries continue to represent about two-thirds of the expenditures. Of the operating budget of approximately \$1.5 million, about 40% is allocated to acquire services for program support and corporate services, such as HR, finance, and contracting services. These services are obtained from other government institutions. This approach provides access to a broad set of expertise in a cost-effective manner. In addition, about \$500,000 is expended towards obtaining IT services.

[English]

Allow me to give you an overview of last year's highlights. The registry is the primary tool for enabling transparency in lobbying. It is an online source of information on who is lobbying federal public office holders on what topics. The timeliness of reporting communications with designated public office holders remains high, as 94% of the over 23,000 monthly communication reports of last year were filed on time. This is positive, as timely information leads to increased transparency.

On the outreach front, I am particularly proud of the recent signing of a MOU with the Conflict of Interest and Ethics Commissioner on matters related to education and outreach.

With respect to compliance and enforcement, two files were referred to the RCMP, and one report was tabled in Parliament. We currently have a caseload of 50 files. I am pleased to report that our employees developed a three-year strategic plan to set priorities for the office. This plan identifies four key result areas, and I will share with you our priorities for 2018-19.

The first key area is a modern lobbyists registration system. A team develops and maintains the registry while another provides guidance and advice to support registrants. Our office will undertake an evaluation of its registration and client services functions and begin implementing recommendations from last year's technical review. Work will focus on ensuring that data continues to be secure, keeps up with technological advances, and enhances not only the user experience but also compatibility with mobile devices.

[Translation]

The second key area is enhanced outreach and communications for Canadians. Informing stakeholders of the requirements arising from the act and the code is important to increase not only their knowledge, but also their compliance.

Upon my arrival, I reviewed the existing organizational structure. As a result, I decided not to appoint a deputy commissioner and to operate with only two executive positions. I also eliminated the position of senior adviser to the commissioner. This allowed me to create a team dedicated to communications and outreach.

To this end, our office will implement the recommendations from last year's evaluation of the program. We will update outreach materials and renew the website to make it easier for all to access the information they need.

● (0850)

Following the signing of the memorandum of understanding with the Conflict of Interest and Ethics Commissioner, we will set up joint webinars on issues of interest to both lobbyists and public office-holders.

[English]

The third key area is effective compliance and enforcement activities. The responsible team monitors and investigates allegations of breaches of the act and the code. The priority in this key area will be to continue to review our investigative procedures and practices in order to identify further efficiencies so that our findings are timely and relevant.

[Translation]

Fourth, but certainly not least, is an exceptional workplace. I wish to make our office an employer of choice by establishing a positive and healthy work environment that fosters engagement and innovation.

Our office has developed and is implementing its strategy on mental health. We will explore initiatives to provide tools that will assist staff in developing positive mental health habits.

We will also look at creating career development programs and opportunities for our employees as career advancement is limited in a small organization such as ours.

[English]

Our office is preparing to move to a new location in 2019, providing an opportunity for us to better integrate knowledge across the organization and to modernize our IT systems. This project will require resources that were identified in the government's budget of 2018. We are also preparing for the pending legislative review of the Lobbying Act. We will be ready to meet with you when this exercise begins.

Throughout my mandate, I will focus on initiatives that offer value for money to Canadians and that improve the efficiency and effectiveness of our operations. However, the fiscal constraints associated with our small organization cannot be overlooked. The budget of \$4.5 million allows for very little flexibility to reallocate resources and to really plan long term.

The current registry is 10 years old, and important investments are required to ensure that it remains up to date with rapidly evolving IT standards. The registry is vital for transparency. I will therefore continue to explore opportunities and, where necessary, make the funding requests to ensure that the registration system measures up to Canadians' needs. The year ahead will be an exciting one for our team, and it is with great enthusiasm that we take on these priorities.

Mr. Chair and committee members, I thank you for your attention.

[Translation]

I welcome any questions you have.

[English]

The Vice-Chair (Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.)): Thank you very much, Ms. Bélanger.

For the first seven minutes, we have Ms. Fortier.

[Translation]

Mrs. Mona Fortier (Ottawa—Vanier, Lib.): Thank you, Mr. Chair.

Good morning, Commissioner. It's very nice to have you here today. I know you have been on the job since December. We met last year, and I'm very glad to see that things are going well.

Can you tell us a bit about the transition and your relationship with the previous commissioner? How was it settling in to your role? Did you encounter any problems when you took office?

Ms. Nancy Bélanger: I can tell you that the transition was organized incredibly well. When I arrived, the team welcomed me with open arms. I had five or six briefing books to read, which I did. The appointment of a new commissioner had been expected for a while, so the transition was really quite smooth. Thanks to the team in place and the former commissioner, the staff were ready and so was I. It was really quite fluid.

To be perfectly honest, I didn't encounter any major issues when I took office, nothing that posed a serious challenge. I did have to get to know the staff, but with 26 employees, it's not very hard to build a fairly good relationship with each person. I had to learn the internal workings of the office and the process. I have been working with officers of Parliament for a decade, so I know how investigations and the like work. I had to become familiar with the process.

On a personal level, my biggest challenge was the organizational structure. That's the aspect I grappled with the most. For instance, did I need a deputy commissioner now or in the future? There were people acting in positions, and I wasn't sure whether I should appoint them to those positions on a permanent basis. I really wanted our focus to be outreach and communications. Two people were in place.

As I said in my opening statement, I didn't see the need for a special adviser. That person is now responsible for the office's outreach and communications activities. That was my biggest challenge. Right now, I think we're in a good place to tackle the year ahead and work towards our goals.

● (0855)

Mrs. Mona Fortier: I gather that, as a result of your review of priorities going forward, you will be focusing on outreach and communications.

How will you set about that? You had some ideas, but tell us, if you would, how your office plans to reach out to Canadians. Websites are well and good, but what approach are you going to take?

Ms. Nancy Bélanger: I agree with you about websites.

Finding a way to reach out to Canadians is important. It's something we're still thinking about, but I will tell you, in all sincerity, that, before we can reach out to Canadians, we have to reach out to parliamentarians, MPs and senators. We've seen many articles in the news that suggest people do not know what obligations lobbyists have when it comes to our office.

I therefore think we need to start with the basics. I sent you an email, and we received about a dozen replies. I've already started meeting with people individually. It's really about educating and doing basic outreach with lobbyists. We just updated our Twitter account. I will also be travelling to meet with as many people as possible, initially, during the first year.

Mrs. Mona Fortier: Thank you very much.

At the same time, we will likely have an opportunity to review the act soon. We'll know shortly.

Do you have any thoughts as to what the review should address? Have you given any thought to what you'd like to examine?

Ms. Nancy Bélanger: Absolutely.

I've already started working on it. I was asked in December whether I could be ready for the spring, so I knew it was coming and I've been working with that in mind. I'd like the review to address a few main themes.

How can the act be amended to improve transparency? How can the act be amended to improve and strengthen outreach and communications, as well as implementation?

Those are the three things I want to focus on.

In terms of transparency, we have a good piece of legislation. It's fairly sound, but there is some work to do. One area that could probably be improved is the "significant part" of duties rule, which we will discuss a bit later. That's definitely an element in need of improvement.

One provision requires that pre-arranged meetings be reported. That could be withdrawn. If people meet on the street, there is no requirement to file a return through the registry. Clearly, then, we can do certain things to improve transparency.

In terms of education and outreach, I'm considering whether we should make training mandatory for lobbyists.

From a compliance perspective, obviously, a range of sanctions are needed. The consequences for those who violate the act or code need to be revisited.

In a nutshell, those are my three priorities.

Mrs. Mona Fortier: What kind of process are you going to adopt, exactly?

You've got some ideas, but are you going to consult people or study certain cases? You have a smaller team, as you mentioned. Will you be adopting a process in order to conduct your review?

Ms. Nancy Bélanger: Yes. Knowing that it might get under way in the spring, I couldn't really commit to extensive consultations. I started with the basics, with the commissioner's recommendations from 2012. I started there and, then, I examined the issues as they've evolved since. I'm also really relying on my team.

I did nevertheless meet with a few lobby groups, and I let them know that your committee would soon be contacting me. I told them that, if they had any suggestions or recommendations, they shouldn't hesitate to send them to me—which is not to say that I will agree with them—or that they could contact the committee directly to make absolutely sure the information made its way to you.

● (0900)

Mrs. Mona Fortier: That's great. Thank you very much.

[English]

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Mr. Kent.

Hon. Peter Kent (Thornhill, CPC): Thank you, Commissioner, for your attendance today. It's always good to see you, and congratulations.

I think all of the MPs around the table appreciate the MOU between your office and that of the Ethics Commissioner. He appeared before us last week and we understand that you have two very separate mandates. The MOU is working mostly on outreach education, but there is a question with regard to the reports from one office without a counterbalancing report from the other.

Last year we had probably the most discussed—certainly the most discussed in Parliament—report from the Ethics Commissioner's office, the Trudeau report, but it involved activity by individuals covered by the Lobbying Act and your office.

I'm wondering what your thoughts might be when a significant report is issued by one office that there might not be a counterbalancing report explaining the other side of what happened in the investigation carried out, I assume, by both offices.

Ms. Nancy Bélanger: In a perfect world, all of our investigations would be done jointly, because, honestly, very often it's the flip side. I worked in that office for six years, and obviously, you can come out with two reports that will have opposite findings. Of course, in a perfect world, again, it would be great to do that.

The problem right now is our respective legislations don't allow us to do that. We cannot exchange information about investigations. They're all conducted in private and so I don't know about the investigations that Commissioner Dion is carrying out, and he doesn't know about mine, unless they've been made public.

The thing is, with the particular file that you are talking about, it's a jurisdiction issue. The Aga Khan is not a lobbyist, and so people may have expected to obtain a report, but a decision had been rendered—and I did not know this when I appeared in December—back in September by the previous commissioner that he did not meet the threshold of a lobbyist because he does not get paid. This is all in the public domain, and this particular decision right now is subject to judicial review at the Federal Court.

So although people expected a report, the decision had already been made that he was not a lobbyist, I read Commissioner Dawson's report, and the interactions with public office holders are with everybody. So he needs to look at the relationship that all of you have with everybody. I only look at lobbyists and in this particular case, there was no flip report to be made.

Hon. Peter Kent: Certainly, but in this case, where there was so much public discussion even while the original investigation by the Ethics Commissioner was proceeding, as the new Ethics Commissioner arrived there was the question of unacceptable gifts not having to be registered on the gift registry. And, again, the commissioner was somewhat circumspect in discussing what an unacceptable gift might be or might have been in this particular case, but it suggests that if an unacceptable gift was eventually not received or was returned, it must have been offered by somebody, and if it was unacceptable on the ethics side, am I fair in assuming it would be unacceptable from your office's side?

Ms. Nancy Bélanger: However, my office has no jurisdiction over the Aga Khan, because he's not a lobbyist.

Hon. Peter Kent: But his foundation is.

Ms. Nancy Bélanger: His foundation is, but if you look at the report, there's no indication the foundation was involved in the gift-giving. Those were the facts we were working with.

Hon. Peter Kent: Prior to the review of the act, and with regard to your reference that you will be working to implement some of the changes you believe can be made without legislative amendments, will you be making operational changes in the reporting of lobby situations by all of those present in a room, in a lobby situation, rather than the single individual who might officially report that lobby situation?

● (0905)

Ms. Nancy Bélanger: I don't know that I can, because it's in the regulations right now.

Hon. Peter Kent: Is that a regulation that cannot be amended?

Ms. Nancy Bélanger: Yes. We cannot name everyone who's in the room. That is an amendment that should be made.

Hon. Peter Kent: Yes.

Ms. Nancy Bélanger: However, I don't have the flexibility to change that. It's in the regulations.

Hon. Peter Kent: Is it something that any self-respecting and honest lobbyist might willingly agree to do without the imposition of new regulations?

Ms. Nancy Bélanger: Possibly, but right now the registry is not set up for that, so it would require some changes.

Hon. Peter Kent: I understand.

You have indicated you will be offering your thoughts on, perhaps, amendments that might be due, given the age of the existing act later this year. Can you give us a heads-up on any of the areas we should be thinking about in advance of your suggestions, areas that are most in need of reform?

Ms. Nancy Bélanger: Certainly, the bigger ones are in the area of transparency, and yes, removing the word "arranged", I think, is not a big change to be made in the law. It would certainly enhance transparency, because right now the obligation is only to report monthly those communications that are oral and arranged in advance. The word "arranged" should be dropped, as far as I'm concerned.

The big one is the significant part of duties. That is extremely difficult to enforce.

Certainly, on the enforcement front, to develop a spectrum of sanctions.... Right now, the way the act is written, we start an investigation, and if there is an indication of an offence—offence being someone is not timely, has lobbied without being registered, or is lobbying while prohibited—I have to suspend everything, and send it to the RCMP. We wait, and then we come back. We then do a report, which is usually a report under the code, because, really, the commissioner has no authority to declare there was an offence.

For timeliness, there needs to be some discretion to possibly impose administrative monetary penalties or even simply a prohibition on lobbying. There needs to be a spectrum, because right now, it's criminal, or a report to Parliament, and an attack to the reputation...and that's it. It would be nice to really think that one through, with all of the procedures that need to be put in place. It's been done elsewhere, so it is possible.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Mr. Angus, for seven minutes.

Mr. Charlie Angus: Thank you, Madame Bélanger. It's a pleasure to have you at our committee, and I want to say that I have enormous respect for your predecessor. I think she always felt the issue of the spirit of the act was very crucial. We've had situations, again, with two reports—from the Ethics Commissioner and the Commissioner of Lobbying—but the Federal Accountability Act didn't foresee every possible loophole. It couldn't, so the spirit of the act is crucial.

This is what I want to speak with you about this morning, because in every Parliament we deal with different sets of issues, different conundrums that we didn't face before. Our committee right now is dealing with the Facebook scandal. The issue of the sudden massive rise of very powerful U.S. data oligarchies is becoming a real concern. The Bank of Canada is actually saying that their power is now so great that it's actually threatening economic competitiveness in Canada.

In the United States we've seen Google, Facebook, and Amazon not just move very heavily into lobbying, but actually put key people into government positions because they do not want to be regulated. So this is the question I raised in my letter to you about Kevin Chan.

I know you're not in a position to talk about specifics, but the 20% rule, to me, is a very outmoded thought. If you have someone who is very connected to government, who can phone up and can meet politicians and be really friendly with them and meet with all senior ministers, his goal is to make sure that they really like him, like the company, and don't want to regulate him, and he doesn't meet the test of lobbying.

What do you think we need to do to ensure that there is greater compliance between giant companies like Facebook and the spirit of the act?

• (0910)

Ms. Nancy Bélanger: The significant part of duties is a threshold for in-house lobbyists. Historically it's been interpreted quantitatively, rather than qualitatively because when you read "significant part of the duties", you could think that "significant" also means the importance of the issue for them, but historically it's always been calculated in time. So it's 20%, meaning one day a week for about a month, total, and it has to be the total of the whole organization and not just one person, so you add up everybody's time.

The problem is that the act is written in such a way that it's not transparency by design; it's the reverse. You only have to register if you meet that 20%, so the onus is on the lobbyist to decide whether he meets that 20%, rather than the reverse, that you must register unless.... Then we need to have that discussion of whether you want every single in-house lobbyist to register. That's a policy decision. There must have been, at some point, a discussion when the act was enacted that you wanted someone to be paid and it had to be about a registerable activity. That's the second thing we need to look at. It has to be about the change of a state of affairs—about a law, about a regulation, about a program, about a policy, or asking for money. That's the second thing we need to look at.

The law is quite prescriptive in a way, and I think that needs to be fixed.

I hear you on the significant part of duties, and I will always interpret the law to meet the spirit of it, but I also have to look at the second step of whether it's an activity that is actually registerable.

Mr. Charlie Angus: Right.

I like this idea of transparency by design as something we should be considering.

On the issue of a significant threshold, the act is written for the average lobbyist who does the day-to-day job, knocking on doors,

trying to sit down with their flip charts and stuff. But when you hire someone who has enormous political power, you're hiring them not to go knocking door-to-door; you're hiring them to make one phone call because when that person makes a phone call to the Prime Minister's Office, people pick up. The people with that kind of influence don't do that 20% of the day in order to register, but that's why they're hired.

It seems to me that some of the issues we dealt with in the last Parliament kept coming back to this 20% rule. Very powerful companies are going to hire very powerful people to make that one call to open a door to fix something, and they don't have to be registered. That's the question of how we address the 20% threshold in a fair way.

Ms. Nancy Bélanger: I am bound by the way the law is written right now. I'll do what I can to look at the facts of the case and apply the law as best I can.

It was a priority back in 2012. One of my recommendations will be to eliminate it.

I can tell you that across the country there are a few provinces that have the threshold of a significant part of duties; the rest have a threshold of hours per year. Every time they have an opportunity, they also recommend getting rid of that.

The solution is not necessarily to look for the number of hours. It really is to give significance. What is the importance of the issues? In terms of looking at criteria, who do we want to register as lobbyists? It's not just about their time; it's also the importance of the issue. Maybe you'll have to think about whether you really want to involve everybody.

There might be some thresholds in number of employees, the operational budget, and so on. We might have to look at criteria to remove it, but I certainly understand what you're telling me.

Mr. Charlie Angus: When the Federal Accountability Act was brought in, which we were very much involved in working with, there was a five-year prohibition for senior public officials to become lobbyists. However, there's no prohibition for lobbyists to become senior public officials, which is very much the modus operandi right now with Google in the United States.

We see Leslie Church, who was in the Liberal leader's office, then go to work for Google as its senior head of communications and public affairs, and she is now the chief of staff to Mélanie Joly, the key minister on many of these files.

Do we need to look at the issue? Who needs to lobby, when you can just have them hired as the chief of staff to advise the minister? It's corporate influence that's so much more direct than lobbying, but there is no prohibition, whereas the prohibition is that if she was chief of staff, she couldn't become a lobbyist.

• (0915)

The Vice-Chair (Mr. Nathaniel Erskine-Smith): We're at seven minutes, so please answer briefly.

Ms. Nancy Bélanger: Right now, I can only regulate lobbyists. You are correct that there is no prohibition, but I can't really comment on that.

Mr. Charlie Angus: Thank you.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): The last seven minutes go to Mr. Saini.

Mr. Raj Saini (Kitchener Centre, Lib.): Good morning to you both. Thank you very much for coming.

I'll be giving some of my time to Mr. Sheehan this morning.

I want to ask you about a couple of things in the 2016-17 departmental results report. It seems to me that there was a big increase in the total number of registration activities during that year and in the number of times the registry information was accessed.

Was this a one-time increase, or do you feel that is this going to be the normal trend?

Ms. Nancy Bélanger: I believe it will be a normal trend. We're preparing for the annual report right now.

I don't know if you can answer that. Has there been an increase? I think the number of registrants is steady now.

Mr. François Bertrand (Director, Registration and Client Services, Office of the Commissioner of Lobbying): Yes.

Mr. Raj Saini: It jumped from 20,000 to 33,000, roughly.

Ms. Nancy Bélanger: Yes.

Mr. François Bertrand: The number of registered lobbyists over the years has pretty much remained the same, about 5,500 lobbyists registered at any one time. Of course, during the course of a year, there are lobbyists who do register, and then end their registration once the lobbying is completed. At any one time throughout the year, there are about 5,000 to 5,500 lobbyists registered.

In the monthly communication reports, there has been a slight increase over the years. It is higher than before, but it is stable now.

Mr. Raj Saini: Do you see that number as the trend line now?

Mr. François Bertrand: Yes.

Mr. Raj Saini: Also in the report, from 2014, when we look at the percentage of monthly communication reports that are accurate, that number seems to be dropping steadily, from 97% to 95%, to 93%.

Are these reports being filed inaccurately? What accounts for the decrease in accuracy of these reports?

Ms. Nancy Bélanger: In the annual report, it will again be at close to 94% accuracy.

We verified the accuracy through reaching out to public office holders to let us know. We take about 5% of the monthly reports and we make a request. The inaccuracy is where they write down that a person was there and in fact they weren't, or it's a misspelling of a name, or there was an issue discussed and it's not on the list. It's very minor, which is why we can't say it's 100%, but there is nothing major in terms of accuracy.

Mr. Raj Saini: Then it's just little things here.

Ms. Nancy Bélanger: Yes, absolutely.

Mr. Raj Saini: Also in the report, your predecessor mentioned that the office had begun to address essential maintenance issues that had been deferred as a result of previous budget reductions. Has that been resolved? What is your plan going forward?

Ms. Nancy Bélanger: Has it been resolved? No.

Back in 2012, because of the reduction exercise, 5% was given back, and now we're continuing to survive with less money to play around with. I don't mean playing; I mean, to transfer into the registry.

The registry is our main tool. What we've been doing since 2014 is maintain it. We continue to develop some parts, but we never have enough money to look at the whole thing and develop it.

It's 10 years old. The team is extremely concerned that some components of it may no longer be supported, and then we would have to continue to almost put band-aids on, instead of looking at it as a whole and relooking.

In the fall, the predecessor asked Treasury Board for additional money for the registry. It was not granted in the budget, but I will continue to look at ways to invest in the registry to make sure that it continues to be modern.

• (0920)

Mr. Raj Saini: Here is one final thought. This is something we've spoken about with every commissioner in terms of outreach and education. I think it's extremely important.

Ms. Nancy Bélanger: Yes.

Mr. Raj Saini: I understand that you have an MOU with the Conflict of Interest and Ethics Commissioner; that is good. Now that you're in this new role and education is so important, do you have any ideas about how you are going to try to reach out not only to lobbyists to explain about filling out reports accurately and what is required of them, but also to the public to explain what the office actually does?

Ms. Nancy Bélanger: As I said earlier, I need to start with lobbyists. I also need to reach out to public officer holders and designated public office holders so that they understand their role when a lobbyist comes in.

We're planning to do webinars, and I'm really hoping that with Commissioner Dion we can reach out to Canadians.

I've been there four months, and so we're seeing long term, but I think I need to reach out even possibly to universities and companies. We just need to get out there, so that people know what we really do and the importance of doing it.

Very often in the media lobbyists have a bad rap, or public office holders are embarrassed to admit that they're meeting with lobbyists. That should not be happening. There's a message out there that we need to explain: that it is positive that you get the information you need to make the decision in the public interest. I will try to assist in that as much as I can.

Mr. Raj Saini: Thank you very much.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): Thank you, Nancy.

A little while back, the gentleman I defeated, Bryan Hayes, an MP for the Conservative Party, came to see me. He had lost the election, he didn't get his job back in the Sault at his place of employment, his wife was in a car accident, and he has no pension. He is thus in a situation in which he has to make a decision.

He wanted to move to Ottawa to work for the Canadian Cancer Society or Big Brothers or something like that, doing stuff that he enjoys, but he wrote and got a negative letter back because he was a backbencher and had to sit out for five years.

I've been doing some research and have been talking to many MPs from both sides of the aisle, and they find this interpretation rather ridiculous: Bryan is able to pick up the phone, as has been talked about, and reach the Prime Minister.

It seems too restrictive. I have a job when I go back; I have a five-year window in which I can make my decision to run again, etc.

I want to bring that to your attention, because I think that rule or law first of all doesn't make a whole lot of sense, but then the interpretation of it as well.

As a final point, just recently—in December—I was handing out Canada 150 pins to various people; we had a small allotment. I went back and met with the former MPs—NDPs and Conservatives—and they all tell the same story. We didn't talk about lobbying or anything like that; they talked about the difficulty of transition for an MP back to the world and jobs.

I'd appreciate having your comments on that.

Ms. Nancy Bélanger: My first comment will be that the rule does not make a lot of sense. I think that former public officer holders need to be careful, when they go back to working outside government, that they don't take advantage of information or contacts they've obtained to then further their own private interests or that of the company. There is a purpose for that rule in the ethics world.

The law as written right now says that it is five years. We get requests for exemptions, but the law right now is written as if someone were a student, very short-term, only doing administrative duties. It's extremely limited as to how I can apply this exemption.

I don't set the rule. The rule is five years.

Whether or not it's the will of Parliament to reduce the five years or give permission to the commissioner to reduce the five years—because right now, the way the law is written I would not be permitted to reduce the five years—is something the committee can look into, absolutely.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thanks very much.

With that, we're on to Mr. Gourde.

[Translation]

Mr. Jacques Gourde (Lévis—Lotbinière, CPC): Thank you, Mr. Chair.

Ms. Bélanger and Mr. Bertrand, thank you both for being here this morning.

The infamous 20% rule is something that's always concerned me. If someone who isn't a registered lobbyist meets with a public office-holder or an MP to discuss a certain issue, how can we know whether they are really adhering to the 20% rule? That person could tell us that they are responsible for only a small file and that they spend no more than one day a month working on it. All we can do is take their word for it. We are powerless.

Do you have any advice for us?

• (0925)

Ms. Nancy Bélanger: Yes, I do have some advice.

The only thing I can recommend is to be diligent about writing down the names of the people you meet with and the issues you discuss. You can also advise them to register if they do satisfy the 20% rule. I don't think, though, that it's up to you to make sure they satisfy the rule. You already have enough on your plate.

However, if you do have doubts, I suggest that you contact our office. We keep a close eye on what goes on in the news. We try to be proactive. If anything shows up on our radar, we contact lobbyists. We endeavour to check the information and make clear what their obligations are. If you have any doubts, let us know. We can't know the name of every single company or organization you meet with.

The only piece of advice I can give you is to write everything down, because I could ask you to confirm the information I was given. If any information needed to be corrected, you would have to tell me that. I could also ask you to confirm whether you had indeed met with certain people.

Mr. Jacques Gourde: Oftentimes, they are people representing charities or non-profit organizations. Normally, it's fine, but shouldn't registration happen automatically in the case of individuals who represent big companies or multinationals such as Facebook, Google, and Netflix?

We often hear stories about a multinational's CEO or a country leader meeting with members of Parliament without being registered. That creates a predicament.

Ms. Nancy Bélanger: Registration could be automatic, but that's not the case now. The act, in its current form, isn't built that way, so legislative amendments would be necessary to require all those companies to register.

Mr. Jacques Gourde: Someone might argue that it's impossible for them to spend more than 5% or 10% of their time on lobbying, but if 10 people from the same company each spend 10% of their time on lobbying activities, it is equivalent to a full-time lobbyist.

Ms. Nancy Bélanger: Yes, absolutely. In that case, they would be required to register. If, when added together, the percentage of time spent by each individual on lobbying exceeds 20%, they do have an obligation to register.

Mr. Jacques Gourde: It's cumulative, then.

Ms. Nancy Bélanger: It is cumulative and takes into account all of the employees.

Mr. Jacques Gourde: If we report all of those people, you will look into it.

Ms. Nancy Bélanger: I assure you that we will examine it. That is my commitment.

Mr. Jacques Gourde: Very well.

Are there other provisions in the act we should pay special attention to, as part of the new study we will be undertaking?

That could make both your job and ours easier. Keeping track of everyone we met with and summarizing what we talked about isn't easy. Sometimes, the meeting lasts just a half-hour.

Ms. Nancy Bélanger: We don't require a summary of the discussion.

What we need from you is straightforward. All you need to do is verify some information, including the date, the names of the individuals present, and the topic of conversation. That means a list of the issues discussed, not a summary of what was said. We ask that you verify a list.

As for what should be amended in the act, I believe I answered your questions. We talked about transparency, the 20% rule—which needs to be changed—pre-arranged communications, and the range of sanctions. Some things may have slipped my mind, but we'll go over all of it together. The ones I just mentioned are the main priorities.

Mr. Jacques Gourde: Thank you.

Ms. Nancy Bélanger: My pleasure.

[English]

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thank you.

Our next five minutes goes to Monsieur Picard.

[Translation]

Mr. Michel Picard (Montarville, Lib.): Ms. Bélanger and Mr. Bertrand, I think this is the first time we've spoken.

What changes have you seen in lobbying over the past four months? The practice has changed. The methods people are using may have changed, thanks to technology and the resources available, so you may have had to revisit your budget because it doesn't give you enough latitude.

What are those changes? Is there a correlation between the changes you have seen and the additional resources you are asking for?

Ms. Nancy Bélanger: The funding we are seeking is simply to keep the registry modern and effective. You know how technology works. The registry is 10 years old. It constantly has to be updated. If legislative changes are made, certain aspects of the registry will change, and that, too, will require resources.

We received 23,000 monthly communication reports last year. I genuinely believe people are trying to meet their obligations. You asked whether lobbying had changed. Clearly, more and more attention is being paid to transparency and ethics. No one wants to contravene the act. The more meetings with public office-holders that take place and the more willing public office-holders are to have those meetings, the more monthly reports will be filed. The number of reports is increasing, so we need tools that are responsive, particularly when people want to register via their cell phone or iPad, which is something they can't do right now. If we want to modernize, these changes are necessary.

• (0930)

Mr. Michel Picard: Do the contentious cases you've examined have common themes, or are you seeing new practices, for instance, in terms of professional recruitment? Have the issues changed over the years?

Ms. Nancy Bélanger: I think we're going to see more and more court challenges. Up to last year, the office had never had a court challenge. One was made, and it was resolved. Now two others are in progress.

Judicial review essentially serves as an oversight mechanism for our work. In both challenges, my appointment and impartiality are being questioned and a reasonable decision is being sought. In one case, I decided to drop the Apotex investigation following the death of Mr. Sherman. In the other, I decided not to pursue the Aga Khan investigation because he was not a lobbyist.

Mr. Michel Picard: On a different note, you made a comment about the return to work after politics.

I don't quite understand something. Regardless of whether an MP is a public office-holder, they will have formed ties and acquired knowledge and experience after one, two, or three terms in Parliament. When they leave political life and go back to work, they don't undergo a lobotomy to forget that knowledge so that it can't be used for personal gain. In the professional world, employers actually seek out people with experience. It's called hiring experienced people.

How do you draw the line between professional experience and personal gain?

Ms. Nancy Bélanger: When a public office-holder leaves office, they are subject to certain rules administered by Commissioner Dion. I would say the only thing they are prohibited from doing is lobbying, given that a lobbyist is in contact with public office-holders.

Of course, an MP will have built relationships with their fellow members and acquired an understanding of internal workings. The purpose of the rule is to prevent the hiring organization from deriving an unfair advantage because the individual held public office. That would disadvantage other people who could also be doing the work. You can work for organizations, but you cannot become a lobbyist.

Mr. Michel Picard: Thank you.

[English]

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thanks very much.

Mr. Kent.

Hon. Peter Kent: Thank you, Chair.

I have two quick questions, Commissioner.

To that final point, do you get a list of public office holders who have approached the due date when their commitment to not act as a lobbyist expires?

Ms. Nancy Bélanger: I do not get a list. We read *The Hill Times* and we make sure that, when people announce they're retiring or that they will leave.... We do not get a list, so it is somewhat difficult to ensure that people who leave are aware of their responsibilities.

I was in the other office when this practice started, but when someone leaves, the letter they obtain from Commissioner Dion will remind them of their obligation not to lobby under the Lobbying Act and to communicate with our office, but I do not get a list.

• (0935)

Hon. Peter Kent: In your first annual report as commissioner, will you report the number of exemptions you have?

Ms. Nancy Bélanger: Yes. There were 17 last year: 10 were granted and seven denied.

Hon. Peter Kent: Finally, to the caseload of 55, will you report on how many have been resolved; how many are yet to be resolved?

Ms. Nancy Bélanger: Yes. Absolutely. There are currently 50 files open on that complaints file.

Hon. Peter Kent: Thank you.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Mr. Angus.

Mr. Charlie Angus: Thank you.

I want to follow up on Mr. Sheehan's line of questioning. I think it is important for us to start to clarify because, again, the act was brought in 10 years ago to try to cover off all manner of things.

We have a case like Bruce Carson, who was in the Prime Minister's Office, steps out, comes back, and starts selling a product and is evading the Lobbying Act. That's a fairly clear-cut case of someone using their power to open doors and avoid the responsibilities of the Lobbying Act.

The case of a backbench MP who wants to work for the Cancer Society would strike me as a very different thing. I've met other former MPs who have wanted to do international work and have been told they can't.

Would we define it by the nature of work, or would you feel it would be better if you as commissioner simply had the discretion to look at them and decide whether or not this was a reasonable use of someone's skill to better society as opposed to pecuniary interest? Is that how we should be looking at changes?

Ms. Nancy Bélanger: I think a criterion of public interest might be an interesting way of looking at it because if someone wants to work with an international organization, I don't know if it would be because of this prohibition as a lobbyist. It might be because of certain rules under Commissioner Dion's mandate for former designated public office holders because you cannot go to work with someone with whom you have had significant official dealings.

I can't speak to the particular facts of the case, but certainly there should possibly be a public interest aspect to look at as a criterion, but it's a policy decision that will only apply to decision-makers.

Mr. Charlie Angus: In the public interest it would also be lobbying and under the ethics? Some people have developed a certain expertise, say, internationally because there's no way you're selling products here to a government agency. You have built a reputation. You have done good things. People know you for that. To me that is public interest.

Would we have to look at that under the ethics code as well?

Ms. Nancy Bélanger: Under the Lobbying Act as members of Parliament you're designated public office holders. Under the Conflict of Interest Act you're not. Some of you might be, but you have to be a minister or parliamentary secretary. There are obligations in that act that are forever and ever. There is no five-year.... You cannot take advantage of the position or use information you have obtained during your position. There is a one- or a two-year post-employment period in that act.

As members of Parliament—and you will know this better than me—I don't believe there are post-employment obligations under the MP code of conduct. Under the Lobbying Act, it's a prohibition of five years for you to not become a lobbyist.

Mr. Charlie Angus: Finally, you had mentioned about financial constraints and updating the registry. Do you have a number you think would help us get where you need to be?

Ms. Nancy Bélanger: I have numbers.

Mr. Charlie Angus: Why did I ask that?

Ms. Nancy Bélanger: I like that question.

The request that went before Treasury Board in the fall was a one-time \$3 million over three years so it was a little more at the beginning and then spread out over the three years. Then after that, it would be \$700,000 a year.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thank you very much for that.

We are going to suspend now. We're going to go in camera. I would ask everyone to clear the room while we deal with committee business. When we resume after that we will have the Information Commissioner with us.

Thanks very much for your time today, and thanks for your evidence.

[*Proceedings continue in camera*]

• _____ (Pause) _____

•

• (1000)

The Vice-Chair (Mr. Nathaniel Erskine-Smith): We will resume our meeting in public.

I welcome our Information Commissioner, Ms. Maynard.

You have 10 minutes for an opening statement, and then we'll move to questions.

[Translation]

Ms. Caroline Maynard (Information Commissioner of Canada, Office of the Information Commissioner of Canada): Good morning and thank you, Mr. Chair and committee members.

I am pleased to appear before you today for the first time since my appointment as Information Commissioner of Canada.

Joining me are Layla Michaud, Deputy Commissioner of Investigations and Governance, and Gino Grondin, Deputy Commissioner of Legal Services and Public Affairs.

[English]

Let me first thank you for placing your confidence in me to carry out the duties of the Information Commissioner. It is an honour to serve Canadians in this role, and I look forward to the next seven years of working to ensure openness and transparency at the federal level.

My first two months on the job have been very busy and an interesting time of learning. I met with each and every employee at the office during my first two weeks. It did not take long for me to see that I have an excellent and experienced management team, as well as a very dedicated and professional staff. My meetings with employees and managers allowed me to gain a deeper understanding of the work done by my office. I also gained a greater appreciation of the 35 years of institutional knowledge that my office holds, and the strong foundation I have to build on.

In addition, I became more familiar with the challenges and the opportunities that the organization faces. This has allowed me to determine where to focus my efforts in the coming months and years.

I have four priorities that I would like to share with you.

[Translation]

My first priority is to address the inventory of complaints my office has yet to complete, while investigating new complaints as they arrive. I will also work with my team to improve operational efficiency and streamline the investigation process to reduce delays when possible.

My second priority will be to take steps to implement the anticipated amendments contained in Bill C-58. These proposed changes present potential operational challenges for my office. For example, if the bill is enacted as currently drafted, my office will have to manage, potentially for a number of years, three distinct complaint and investigation processes due to transition periods in the bill.

[English]

My third priority will be to ensure that the day-to-day work of my office is open and transparent. I will also stress these values in my interactions with institutions, members of Parliament, and Canadians. In addition, work is already under way to enhance and refresh my office's web and social media presence.

My goal is to make the complaint process simple and transparent for Canadians. I also want to provide more guidance to both

complainants and institutions on the investigation process and the decisions taken, and more timely updates on access to information news and activities.

Finally, my team will work closely with institutions to help them meet their obligations under the Access to Information Act, and we'll address systemic issues. In the coming months, I intend to personally meet with access to information coordinators and the heads of a number of institutions to reinforce the importance of this collaborative approach and promote openness and accountability.

I will embrace every opportunity to collaborate with you and with Parliament as a whole, with institutions, and with other stakeholders, including the Privacy Commissioner. I will also emphasize the importance of sharing best practices. Canadians deserve to have institutions that are open by default and that make access a priority.

● (1005)

[Translation]

For the coming year, and just like the last six years, my office's main estimates are \$11.4 million, and I have 93 approved full-time equivalents. Approximately 80% of this funding will go to deliver our investigations program. The other 20% will be dedicated to our corporate services, such as finance, information technology, and human resources.

As you likely know, the government announced \$2.9 million in temporary funding for my office in the 2018 federal budget. I plan to use these funds for the resolution of complaints. In particular, I would bolster my investigations team for 2018-19.

I would fill vacant permanent positions and rehire the experienced consultants that my office engaged in past years. This would be good news for Canadians. My office would be able to complete more investigations in the coming year because of this additional funding.

[English]

Ideally, however, my office would be provided with permanent funding to allow me to permanently increase the size of my team and bring stability to the office. The volume of complaints my office receives is increasing. My team registered nearly 2,600 new files in the year that just ended on March 31. This is a 25% increase over 2016-17. As more and more Canadians submit requests under the act, the number of complaints will keep growing. I'm very much of the view that temporary funding and temporary staffing will not address the challenges my office faces. To meet this demand, my office needs more permanent funding.

I am pleased that the President of the Treasury Board announced last June that my office's resources will be increased on an ongoing basis in response to the adoption of Bill C-58. However, this funding will not be sufficient to meet the growing demands on my office and serve the needs of Canadians.

In closing, I wish to emphasize two aspects of the positive impact an increase in permanent funding would have for my office. First, as I've said, it would bring stability to the organization. I could hire enough employees to ensure the act is appropriately applied and respond to complaints in a timely manner. I could also retain these employees from year to year, providing needed continuity. Second, I could pursue innovative options for making the investigation process more efficient. I would like to capitalize on technology to enhance my office's service to Canadians.

[Translation]

That being said, thank you, again, for inviting me to appear today. I look forward to further opportunities to report on the progress I am making against my priorities and on my statutory mandate.

I would be pleased to take your questions.

[English]

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thanks very much for your opening remarks.

Our first seven minutes goes to Ms. Fortier.

[Translation]

Mrs. Mona Fortier: Thank you, Mr. Chair.

Congratulations, once again, Commissioner.

Ms. Caroline Maynard: Thank you very much.

• (1010)

Mrs. Mona Fortier: I'm extremely glad that you are taking on this role during a very important transition period for the office, in my view.

I'd like you to start, if you would, by describing the transition and your relationship with the former commissioner. Could you also tell us whether you've had an opportunity to become familiar with the issues?

Ms. Caroline Maynard: Actually, I haven't really had a chance to discuss the transition with Ms. Legault. I didn't meet her until my third week on the job, when we shared a meal.

Ms. Michaud and Mr. Grondin, along with the rest of the staff, have worked diligently to familiarize me with the process and ensure a smooth transition. As I said earlier, I also took the time to meet each one of my 87 employees. I learned quite a bit from those meetings. They shared with me what they felt the office was doing well, as well as which areas we could work on, as a team, to improve. That information has been very beneficial.

Mrs. Mona Fortier: You've been in office 60 days now. That's not much time, but it may have been enough to help you get you a clearer idea of what you'd like to do. I took note of your priorities, but what would you like to do in the short term? What do you hope to achieve in the next year?

Ms. Caroline Maynard: Without a doubt, what I'd like to do in the short term is tackle the inventory of complaints, as well as consult our teams on existing processes and efficiency measures that could be deployed quickly.

I want to start by meeting with team coordinators and institution heads to have discussions, achieve better co-operation, and promote openness by default in government. That's what I'm working on right now.

In the medium term, a review of the process is crucial. Institutions and Canadians need to understand not just the complaint process, but also our decisions. It's very important to me that our office do a better job of publicizing what we are doing so that everyone knows exactly what to expect and is better able to make decisions in response to access to information requests, with the ultimate goal of reducing the number of complaints.

Mrs. Mona Fortier: You mentioned earlier that you had 2,600 new investigations, in addition to the existing backlog of files. We are aware of that. That said, what are you going to do so that new files do not become part of the backlog, as you continue to deal with the files that are already outstanding? I imagine that the number of files is on the rise, is it not?

Ms. Caroline Maynard: It's interesting to note that, over the past six years, access requests have increased by 215%.

Our office saw a 25% increase in the number of complaints last year alone. We started the year with 3,495 complaints in the inventory, and we would like to do exactly what you are suggesting.

Currently, people have to wait about seven months before a complaint is assigned to an investigator. I therefore recommended that we create two teams, one to handle incoming complaints and the other to deal with outstanding complaints. We are working at both ends in an effort to climb Mount Everest, so to speak. I think that, if we are able to speak with the individual as soon as we receive their complaint, we will have a much easier time finding the information they are really looking for and endeavouring to meet their needs immediately by supplying the relevant information from the outset.

Of course, we have some very old files and some very big files. Rather than concentrating on the number of complaints, I would prefer to focus on how our investigators approach their work and interact with institutions. No one wants to touch the big files because those are the ones that are avoided when the primary focus is always on quantity.

Going forward, then, we are really going to be focusing on investigation quality and institutional co-operation. In order to close a file, I won't hesitate to issue orders under the new legislation, or recommendations under the current act, if an agreement clearly cannot be reached.

Mrs. Mona Fortier: I was just going to ask you how many files you anticipated closing in the next year. I realize that it isn't necessarily about the number of complaints, but that it really has to do with the different types of investigations.

Ms. Caroline Maynard: Given the funding we've been allocated, our goal right now is to close 2,100 files. As you can see, though, if we process 2,100 files, we won't have time to eliminate the backlog or even begin to tackle it.

• (1015)

Mrs. Mona Fortier: Does it come down to money or efficiency? How will you get caught up or even get ahead of the workload, as opposed to always being behind?

Ms. Caroline Maynard: Over the last six years, despite a rising number of complaints, our office's funding and staff size have not increased. Without a doubt, we need more money in the form of permanent funding, to hire additional staff, instead of consultants, who, year after year, come, open files, but don't have time to close them. We need more permanent staff and the capacity to keep them.

That said, we can certainly achieve efficiencies. I was surprised to learn that many transactions are still paper-based, not just within our own office, but also with institutions. Ultimately, the ideal would be to transfer all file-related information electronically.

Our new online complaint form is very popular and has allowed us to electronically process complaints we deem as administrative, in other words, cases involving unreasonable delays or time extensions. Those account for 85% of the complaints we receive. Eventually, we also want to be able to electronically process complaints involving denied requests or the application of exemptions or exclusions. That would really be helpful.

Mrs. Mona Fortier: Thank you very much.

[English]

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thanks very much.

Our next seven minutes go to Mr. Kent.

Hon. Peter Kent: Thank you, Commissioner, for your appearance today.

Your predecessor composed an unprecedented and scathing evaluation of Bill C-58—a report card effectively with more fails than passes—and characterized it as regressive, in regard to access to information for Canadians. When you appeared before us, you were somewhat more discreet and said that anything in this bill that slows access or obstructs access is a concern and any area where accountability or access is increased represents progress.

In your opening remarks, you've mentioned the potential operational challenges should Bill C-58 be passed as it is today. It's in second reading in the Senate and a number of senators have indicated quite strongly that they will be making amendments to this legislation. Before you know the outcome of this piece of legislation, are some of your investigations or files on hold pending the legislation you will have to work with in the longer term?

Ms. Caroline Maynard: No. The complaints that we've received will have to be dealt with under the current act. Any new complaints received after Bill C-58 is passed will then be affected by the amendments. That's why I was saying that if nothing changes in the amendments, we will end up with three different types of investigation and complaint processes because the order-making power comes into effect a year after Bill C-58 will be approved. That

means I'm going to have the old-fashioned complaint system with recommendations, a one-year new system with recommendations also; and in a year from now, then I would have the power to issue orders. This concern has been addressed already through a letter that I've sent to Mr. Brison, and I'm told they are looking into it. I've also sent a letter to Senator Ringette, who is responsible for the bill. I've addressed those concerns with them.

Hon. Peter Kent: Are you looking to Senate amendments to improve Bill C-58 operationally for you?

Ms. Caroline Maynard: Yes.

Hon. Peter Kent: Among the backlog of files, an interesting story was reported by the *Toronto Star* regarding a researcher's request for information on an RCMP investigation called, I believe, Project Anecdote. The response that the researcher got initially was that the department would require an extension of 292,000 days; that would be 800 years, long past the life expectancy of not only the researcher but probably many of your investigators. That was changed to—

• (1020)

Ms. Caroline Maynard: Eighty years.

Hon. Peter Kent: —80 years. That would seem to be extremely unusual.

Can you address this? Is that an excusable delay? Is the Library of Parliament and archives—

Ms. Caroline Maynard: I can't really comment on this particular file. I'm not even sure we have a complaint about it yet.

From my reading of the article, it was a request that would require the processing of 780,000 documents. I understand that sometimes there's a calculation, and depending on the number of pages some people have a little calculation. They're not supposed to do that, but they come up with how much time it's going to take one analyst to review this amount of paper. It is not acceptable that we would ask somebody to wait 80 years for an access. The question is then, how can we help the requester to narrow down, to scope down, what they're really looking into?

We're doing the same thing with complaints. That's why I talk to the complainants right away when we receive their complaints. If they know right away what they're looking for in 1,000 pages, then we can focus on the 100 pages that they really need. We are going to have a very successful and timely response. If we let it go and we don't respond right away, or we don't scope down the investigation or the request, it's going to take forever. We need to work with the complainants. We need to work with the institutions to help them understand that. They have an obligation under the act. I think most institutions do it; they have a duty to help. I think sometimes some stories like that come out and they focus on the wrong idea.

Hon. Peter Kent: Sure.

I understand that this particular file is a closed file—15 years old. One would think that the essence of that closed file could be quite easily researched and provided.

Ms. Caroline Maynard: We have files that are really old and they still have national security issues, and for reasons of security they wouldn't let the information be released. It could be that they just want to make sure.

Hon. Peter Kent: Okay.

You addressed the matter of staffing and the preference for permanent staffing and permanent experience. You also talked about using the budget to increase the number of experienced consultants being hired. Are these caseworker consultants that you're hiring?

Ms. Caroline Maynard: Yes.

Hon. Peter Kent: Is that a challenge for you in terms of having caseworkers who are familiar with the process and expediting results?

Ms. Caroline Maynard: I can tell you that we're all fighting for the same consultants and experienced people, because the professionals in the world of access to information are limited. All the institutions are having the same problem as I am, so we are all looking for people who have the knowledge. Especially for me, if I only have a year, I don't want somebody I have to spend six months training. We have enough to train them on the case management system and the technology we're using at the office.

However, if they can come in and know exactly how to interpret the Access to Information Act and deal with the institutions.... Often they still have contact with these institutions, so we make sure we use those consultants who are retired. We'll give retired coordinators from DND files from DND, because they know the people there and the types of files, and they can work on those types of files.

It's a very difficult thing, though, to hire people for one year, keep them, and make sure they can close enough files in that one year, appropriately using the funding that has been provided.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): We're at time, unfortunately.

Mr. Angus, you have seven minutes.

Mr. Charlie Angus: Thank you, Mr. Chair, and thank you, Madame Maynard. It's wonderful to have you at our committee again.

I want to follow up on my colleague's direction. Your predecessor was very scathing in her analysis of Bill C-58 and its threat to access to information. The Canadian Journalists for Free Expression have also raised many concerns about the way the act is written and how it will limit journalists' ability to obtain information. Do you share their concerns?

Ms. Caroline Maynard: I can tell you that I have shared three concerns, currently, with Bill C-58. The key area is the mandatory requirements in section 6. I do believe those requirements will limit access and will probably even deter people from asking for information. I've also made clear to Mr. Brison and his team, and to Senator Ringue, that it's a concern I'd like to talk to them about. I don't think it's necessary. I think the status quo with the Access to Information Act will be better for Canadians.

Also, the transition period for the order-making power is a concern. The lack of enforcement for the order-making power is also something we want to address. The current Bill C-58 doesn't provide me with the authority to get a certification of the orders at the Federal Court level. Not having a mechanism to ensure they respect the orders could potentially lead an institution to not abide by those orders.

• (1025)

Mr. Charlie Angus: My colleague mentioned a delay of 80 years, but we're seeing many delays of 900 days, and in the life of a political story, 900 days might as well be 80 years, because it's pushing any documents past the life of a present Parliament. Those documents can be rendered fairly useless just by delay.

Are you seeing an increase of these extensions? I've seen a number in my office already, for which we should be getting a straightforward answer, yet we're told...900 days or 1,000 days. Are you seeing that this is starting to be used more often?

Ms. Caroline Maynard: I think it depends on the institutions. Some institutions have a problem meeting their 30-day turnaround, that's for sure. We're working with them. They have high-volume requesters, and I believe we need to find solutions. We will often assign some of our own investigators to work with them on a backlog or on a type of file so that we can get them out.

However, demand has increased by 215%. The institutions are like me; they are not funded as much, maybe, and they're looking for professionals to analyze the requests.

I plan to go around and meet all the institutions and really try to focus on promoting "open by default". I hope that will reduce the access requests, too.

Mr. Charlie Angus: Well, I find that when I make access to information requests, I'll get a response and they'll say that what I'm asking for involves x number of pages. They will ask me to be more specific or maybe to limit the timeline to a particular period. We work with them and we get it turned around.

We find there are other public institutions that do not seem to want to work with us and just throw up the blanket 900-day delay.

There have been report cards in the past, and there have been—seemingly—repeat offenders at certain institutions, like the Department of Justice, that don't seem to feel these quasi-constitutional rights apply to them. Will you be doing report cards on the compliance rates and the willingness of the various public institutions to fulfill their obligations under the act?

Ms. Caroline Maynard: My understanding is that the report cards are done by the Treasury Board Secretariat. Our office uses them when we meet with the institutions, because we are interested in how they meet their obligations under the act. My focus in the next year, and my mandate, is going to be towards collaboration, open government, openness, and transparency.

I really want institutions to understand the purpose of the Access to Information Act, and the rights of Canadians. Hopefully, we'll be able to get them to collaborate and understand better, but for sure we'll use those report cards in our meetings with the ministers, and with the ADMs and DMs, to make sure they understand what's going on in their institutions. Maybe it's a question of funding for them too.

Mr. Charlie Angus: My concern is that access to information requests can be very damaging, embarrassing, to government. Certainly no one is interested on the government side in having documents turned over if a journalist is looking or an opposition member is looking.

In the act, where they can turn down frivolous or vexatious requests, the Canadian Journalists for Free Expression has raised alarm bells about that, because that's an arbitrary designation that could allow a blanket refusal.

Do you believe that the ministries, the government, should have that power, or should that be your power to decide what is frivolous or vexatious?

• (1030)

Ms. Caroline Maynard: Under the current wording of Bill C-58, the institution will not be allowed to turn that down without our approval.

Mr. Charlie Angus: Without your approval.

Ms. Caroline Maynard: Yes.

We've already put together a preplan for our team to be responsive to those requests. We don't want those to be another reason to delay responding to requests, so we're going to have a special team responding, so the institutions know right away if we approve or not. The challenge will be to determine the tests.

Luckily, there are other jurisdictions that have those provisions in their act. The Government of Ontario has those, if I'm not mistaken, so we'll use their jurisprudence and develop our own tests and tools. We also want to work with the institution to develop the questions they have to answer before they make those determinations.

Mr. Charlie Angus: Thank you very much.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Our last seven minutes go to Mr. Saini.

Mr. Raj Saini: I'll be splitting my time with Mr. Sheehan.

Thank you very much, Ms. Maynard and your colleagues, for coming here today.

I want to start off with the funding and the backlog of cases you've had. I know the government has continued to provide funding to help you clear that backlog. Can you give us an update on the additional funding that was given, how many additional complaints you resolved, and how you plan to use the additional funding for the coming year?

Ms. Caroline Maynard: Last year, our office received \$1.8 million extra for the year, and our plan was to close 1,900 cases. We succeeded with that plan.

We finished 1,974 cases in the—

Mr. Raj Saini: And that was out of a backlog of 3,500 cases?

Ms. Caroline Maynard: We started the year with 2,800 cases. We closed 1,900. That means we've ended up with another bigger backlog this year.

The problem was that we received the extra funding in December. It's difficult at that point to make decisions on a long-term basis when we don't know if we're going to have the funding for the entire year and if we're going to have the funding the following year.

We're very excited this year. I've been told that the budget is providing us with \$2.9 million. We're finalizing that with Treasury Board. We requested to get this fund as quickly as possible so we can plan and spend it throughout the year. With this additional funding, we're going to be able to hire 22 new consultants, or keep the ones we have.

Mr. Raj Saini: How many consultants do you have currently?

Ms. Caroline Maynard: Currently, we have 11.

Mr. Raj Saini: You have how many—

Ms. Caroline Maynard: We have 50 investigators total, 22% are consultants, and we want to increase that to an additional 11 consultants. We only had the one year, so we cannot go and hire employees. We could do it on a term basis. We're going to start a competition soon for new employees, but without the promise of permanent and long-term employment, sometimes it's difficult to recruit.

Mr. Raj Saini: How many people do you have investigating currently?

Ms. Caroline Maynard: There are 50.

Mr. Raj Saini: Out of a total of how many employees?

Ms. Caroline Maynard: It's 93.

Mr. Raj Saini: Out of 50, you have 2,600 cases that you get every year. On average, one person gets around 50 cases to investigate.

Ms. Caroline Maynard: Yes, it was actually about 45 cases per —

Mr. Raj Saini: How long does it take, on average, to investigate a case?

Ms. Caroline Maynard: It takes nine months, on average. Some cases are very short, but other cases take longer.

Mr. Raj Saini: Okay.

Looking at your annual report, if you look at your chart, the highest year or the highest mark was a 40% disclosure rate that you had going back as far as 1997 to 2015-16, and there has not been much legislative change on a year-to-year basis. Why is it not consistent, or is your office trying to do anything to increase the disclosure rate by hiring more people? Is that your forward-looking...?

Ms. Caroline Maynard: I think what you're referring to is the disclosure rates at the institution level. When there is a request of access, the institutions will release 40% of the information and will use exclusions and exemptions to protect most of the information that they are being requested to release.

We do see an increase in secrecy. We don't know why, and that's something that...I am new to the job, so my mandate will be to make sure that we understand where it comes from. We are working towards a culture of openness. The government is a very pro open government at this point, so we need to get this message down to all the levels. I don't know if it's the OPI, the person the information is coming from who is redacting, or the ATIP coordinators who have been told to redact, but clearly the message is not there. That's something I need to work with the coordinators on.

• (1035)

Mr. Raj Saini: How much time do I have left? Two minutes?

I'll give it to Mr. Sheehan.

Mr. Terry Sheehan: Thank you.

Congratulations, Caroline, on your recent appointment. I saw the release from the Prime Minister's Office. You have quite an impressive resumé, and I look forward to your commitment and ideas, going forward.

Some of your ideas that you talked about, your remarks, were about how you can employ technology in the office to help deal with the increased number of requests for information. As you mentioned, this government is about openness and transparency, and as we continue that messaging, we're surely going to get more and more interest and requests. You did mention the \$2.9 million in temporary funding over the \$11.4 million. You talked a lot about some of your ideas in taking your temporary workers and making them into full-time workers.

Would you share with us your philosophy? You don't have to get into the details precisely about the technology and the computers you're using and whatnot, but rather just your comments about employing technology to help deal with the open and transparent environment.

Ms. Caroline Maynard: It's interesting because technology is at a lot of different levels, and it could be as easy as.... I was surprised when I started my new position that I had only one screen in my office. I was used to using two screens and people were questioning me. However, when you do a paper review, and you have your file on one screen, you can work on your Word document on the other screen, instead of going back, up and down and up and down. Nobody seems to have used that, so I ordered two screens for everybody at the office. That was one of my first decisions.

There were a lot of people doing reviews on paper, still, and changing words with a red pen like a teacher. We're now using track changes. Yes, things like that, it could be as easy as this.

It could be as complex as how we interact with the institutions on a more efficient basis. I'm not talking about emails. We'll also try to interact more face to face. If you have a thousand pages, sending an email for each line that is being redacted takes a lot longer than if

you do it face to face and we go through it together. There is going to be some of that.

The exchange of information is still all done by mail and we've just, in the last year, started using emails to send our responses to complainants in institutions. I want to do a lot more of that, and I want to receive the complainant's arguments and the institution's representations through electronic means. However, we need to have a protected system for that because there is a lot of personal information and a lot of secure information. For any top secret or secret information, we'll never be able to use this technology, but for any normal cases where there is the protected B type of information, I think we can get to that, where we'll have a portal, maybe, and the information will be sent to us. We're looking into all of that.

I am also talking with the Privacy Commissioner because they're looking at some technology also to find, just within the document, information that is repetitive, so you can do a search. There is a lot of technology at that level that we're going to be looking into.

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thanks very much.

We have six minutes left in our meeting and I'd like to vote on the main estimates to get that out of the way.

Mr. Gourde, you can have two questions.

[Translation]

Mr. Jacques Gourde: Thank you, Mr. Chair.

I'm comforted to know that you've incorporated more technology-based solutions. Everyone is better off if things go more quickly.

Do you process complaints in the order they are received, or do you categorize them first? Do you have investigators who specialize in different types of complaints and others who deal with more complicated files? Would categorizing complaints speed up the process? Do you work on a first-come, first-served basis?

Ms. Caroline Maynard: It's a bit of both. We realized that certain investigators were more compatible with certain institutions or complainants. In those cases, it's not even an issue. Those investigators are assigned the complaints and files from the corresponding individuals.

We explored the idea of assigning files by portfolio, but that doesn't always work given that some files involve more than one subject. That makes it hard to identify the main issue in the file. Nevertheless, we do triage new files to determine whether we can facilitate the resolution process as soon as a complaint comes in. However, if the file appears to be more complex, it is assigned to an investigator. As I said, it's a bit of both.

• (1040)

Mr. Jacques Gourde: Once all the heavy lifting is done, are complainants usually satisfied with the response they receive? Do you have statistics showing, for instance, that it's half-and-half, or that people are generally satisfied or disappointed because they didn't necessarily receive the information they were looking for?

Ms. Caroline Maynard: Unfortunately, given how long it currently takes to process a complaint, I'm sure complainants are happy to receive a response. However, since they don't obtain the response until a year and a half or two years later, the information or records received may not be as relevant. My goal, then, is to reduce that response time so that people receive the information they are looking for when they request it.

Mr. Jacques Gourde: You said something interesting. Given how long the response times are, I'm wondering about cases where a complaint comes in a year after the information was initially requested and you know that it's going to be another five or six months before you get to the complaint. In those situations, are you able to check with the complainant to determine whether it's worth your while to review the file or whether you can simply close it to avoid unnecessary costs?

Ms. Caroline Maynard: We do that, of course, but it's unfortunate. I don't want things to get to that point. I don't want to have to call complainants to ask whether they still want the information in question since they asked for it eight months ago.

I'd like us to be able to call the complainant immediately to ask what information they are looking for exactly. Would they want the information right away if the institution were now willing to turn it over, in co-operation with our office? If not, or if we weren't able to deal with the file easily, the complainant might not obtain the information for two or three years, so they wouldn't be very satisfied.

In cases like that, it's important to have the co-operation of not just the institution, but also the complainant.

Mr. Jacques Gourde: Thank you.

[English]

The Vice-Chair (Mr. Nathaniel Erskine-Smith): Thanks very much. I appreciate your remarks here today and I do hope that the Senate heeds your call for accepting amendments. Only government would think it's a good idea to have three complaint processes in place under one institution.

We have a number of votes here on the main estimates.

OFFICE OF THE COMMISSIONER OF LOBBYING

Vote 1—Program expenditures.....\$4,086,292

(Vote 1 agreed to)

OFFICE OF THE CONFLICT OF INTEREST AND ETHICS COMMISSIONER

Vote 1—Program expenditures.....\$6,134,141

(Vote 1 agreed to)

OFFICE OF THE SENATE ETHICS OFFICER

Vote 1—Program expenditures.....\$1,214,777

(Vote 1 agreed to)

OFFICES OF THE INFORMATION AND PRIVACY COMMISSIONERS OF CANADA

Vote 1—Program expenditures.....\$10,127,084

Vote 5—Program expenditures.....\$22,693,992

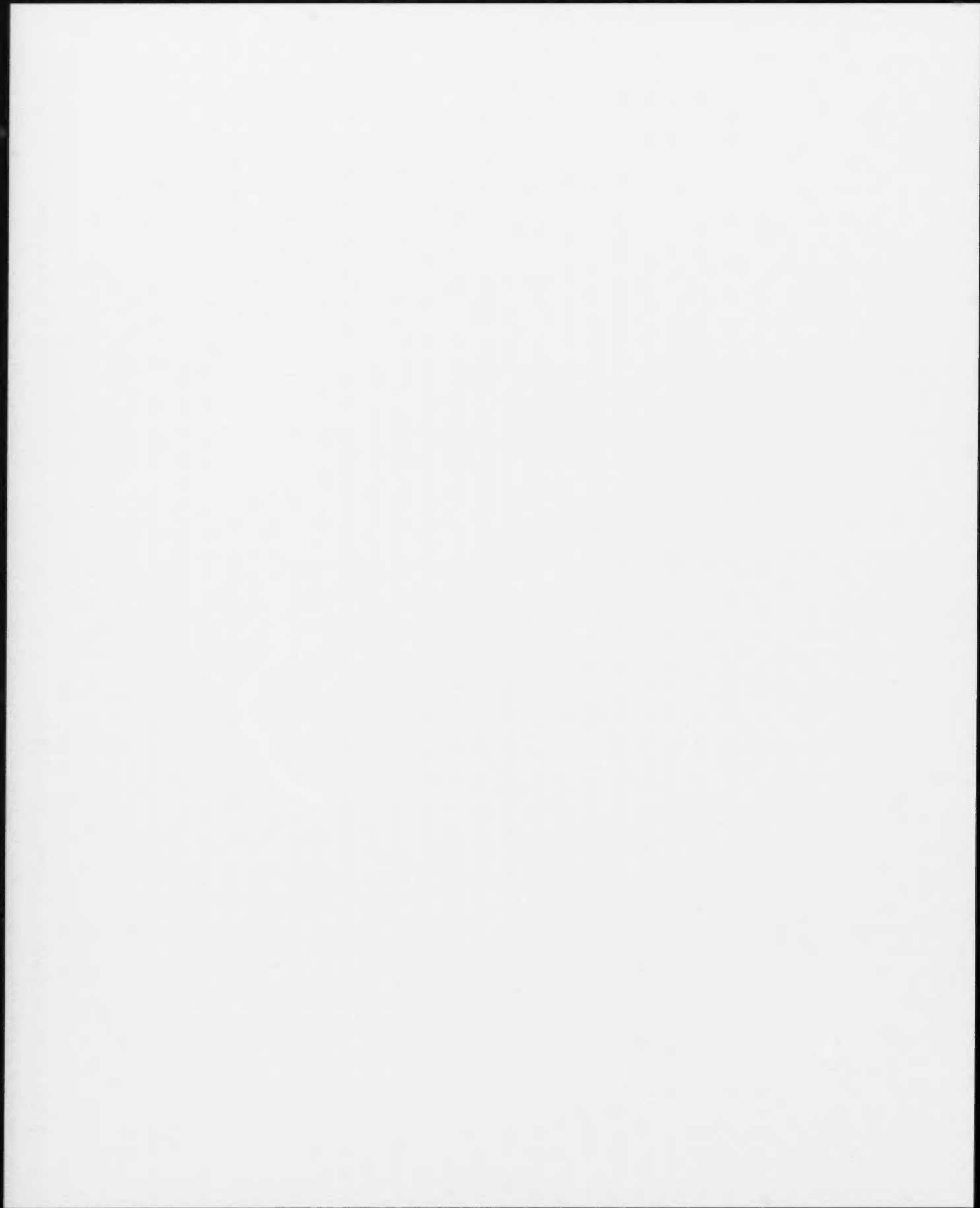
(Votes 1 and 5 agreed to)

The Chair: Finally, shall the chair report the main estimates for 2018-19, less the amounts voted in interim supply, to the House?

Some hon. members: Agreed.

The Chair: You're so very agreeable and we're two minutes under time. Thank you very much.

The meeting is adjourned.







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